

# PART 33 -- PROTESTS, DISPUTES, AND APPEALS

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## SUBPART 33.1 -- PROTESTS

### 33.103 Protests to the agency.

(d)(4) A level above the contracting officer is the CoCO and/or the HCO.

(f)(1) The approving official for the justification/determination is the HCA. Approval requests shall be forwarded to the HCA electronically and be coordinated through the HCO, local legal counsel, and the OSBP if the protester is a small business. See [Contract Document Approval Signature Routing Procedures](#).

(3) The approving official for the justification/determination is the HCA. Approval requests shall be forwarded to the HCA electronically and be coordinated through the HCO, local legal counsel, and the OSBP if the protester is a small business. See [Contract Document Approval Signature Routing Procedures](#).

(S-90) Upon receipt of a protest, the contracting officer shall immediately advise the HCO, local legal counsel, and the Agency Competition Advocate (ACA). The contracting officer shall make a best effort to provide a written decision to the protester within 35 calendar days after receipt of the protest. The written decision shall be sent to the protester by certified mail. The decision, with all supporting documentation, shall be coordinated with local legal counsel. If the protest involves competition, coordination shall also be obtained from the ACA. Supporting documentation should, as a minimum, include a copy of the following:

- (1) The protest;
- (2) The offer submitted by the protesting offeror;
- (3) The offer which is being considered for award or which is being protested;
- (4) The solicitation, including the specifications or portions relevant to the protest;
- (5) The price/cost analysis or abstract of offers;
- (6) Any other documents relevant to the protest;
- (7) A statement signed by the contracting officer setting forth findings, actions, and recommendations; and

**(8) Any additional evidence or information deemed necessary in determining the validity of the protest.**

**33.104 Protest to GAO.**

(b) Protests before award.

(1) The contracting officer must prepare a determination and findings (D&F) in accordance with FAR 33.104(b) to be signed by the HCA. However, no award can be made or selection announced prior to approval by the HCA. The contracting officer must also prepare a request for

approval that identifies all protest issues and addresses the merits and expected resolution of the protest. Include details of any congressional interest in the protest.

(c) Protests after award

(2) The contracting officer must prepare a D&F in accordance with FAR 33.104(c) to be signed by the HCA

(S-90) HCA Notification.

(1) Upon receipt of a protest, the contracting officer shall immediately advise the HCO, local legal counsel, and the ACA.

(2) The HCO shall notify the HCA about the receipt of protest within 1 business day. The notification shall include the protestor's name, allegations, the responsible contracting officer, legal attorney, and if a notification of stop work order will be issued.

(3) The HCO shall provide recommended resolution to the HCA within 2 business days of receipt of protest that includes the position of whether to defend or not, the recommended corrective action, and the request for potential override by HCA.

(S-91) HCA Override.

The HCO shall notify the HCA of the intent to pursue an override within 1 business day after protest notification. The HCO shall coordinate the D&F with legal counsel and once legal counsel coordination is returned to the HCO, the D&F will be forwarded to the HCA for approval. The maximum business days from protest notification to presentation of the D&F to the HCA for approval shall not exceed 5 business days. The HCA will make a decision to authorize award or continued performance within 3 business days of receipt of the override D&F. The contracting officer shall immediately suspend performance while requesting an override.

## **SUBPART 33.2 -- DISPUTES AND APPEALS**

### **33.204 Policy.**

Upon receipt of a claim, the contracting officer shall immediately advise the CoCO, HCO, and legal counsel.

### **33.211 Contracting officer's decision.**

(a) The contracting officer must coordinate with legal counsel and the HCO prior to issuing a final decision.

(S-90) *Settlements*. The contracting officer must coordinate with legal counsel, a DITCO Cost/Price Analyst, the CoCO, and the HCO on proposed settlement agreements.

